Case No. 12-3765

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

ARGUS LEADER MEDIA, d/b/a ARGUS LEADER,

Plaintiff-Appellant,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA, SOUTHERN DIVISION

APPELLANT'S REPLY BRIEF
Filed on behalf of Argus Leader Media

Jon E. Arneson
South Dakota Bar #45
123 S. Main, Suite 202
Sioux Falls, SD 57104
(605) 335-0083
Attorney for Appellant

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ARGUMENT[1]

USDA's record of SNAP payments to retailers is not information that 7 U.S.C. §2018(c) exempts from disclosure.

SNAP, "the cornerstone of USDA's nutrition assistance programs,"[2] is essentially the federal government's subsidization of food purchases by low-income households. Under the program administered by FNA, a USDA agency, the government funds the SNAP accounts of recipient households with "benefits" that are used—"redeemed"—to buy food from participating retail stores. SNAP transactions—now exclusively electronic—begin with the recipient household to buying food with what amounts to a debit card and end with the transfer of funds from the recipients SNAP account to the participating retailer's bank account. (App. 39, ¶¶ 47-50 and USDA Br. 5)

USDA's argument that the "plain language" of 7 U.S.C. §2018(c) forces the agency to withhold from the public annual amounts paid to SNAP retailers—information USDA refers to as "redemption data"—is problematic for the reasons discussed below. (USDA Br. 8)

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[1] References to USDA's brief will appear as "USDA Br." References to Argus's initial brief, addendum and appendix will appear, respectively, as "Argus Br.," "Add." and "App." References to the district court opinion will remain as "Op."

[2] *Statement of Objectives for Store Tracking and Redemption System (STARS) Recompete,* Prepared for: U.S. Dept. of Agriculture, Food and Nutrition Service, November 9, 2010, at 1. (Report is available on General Services Administration website, www.fbo.gov.)

When FOIA's heavy presumptions favoring record disclosure are blended into the mix,[3] USDA's position that the payment side of the SNAP transaction is a government secret becomes untenable.

a. <u>USDA has abandoned its reliance on regulation(s) to justify withholding "redemption data."</u>

At the outset it is interesting to note that USDA originally justified its refusal to disclose annual SNAP retailer payments on the ground the information was protected by regulation, as authorized by 7 U.S.C. §2018(c).[4] However, USDA's argument summary marks a noticeable departure from that position:

> The plain language of 7 U.S.C. §2018 requires FNA to withhold the redemption data requested by Argus. Section 2018(c) requires participating retailers to "submit information, which may include

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[3] The FOIA presumptions and burdens are well-established and are not in dispute. (Argus Br. 11, 12 and USDA Br. 10) See *Department of the Air Force v. Rose,* 425 U.S. 352, 360-361 (1976) ("[FOIA's] basic purpose…full agency disclosure unless information is exempted under *clearly delineated statutory language."*); *U.S. Dept. of Justice v. Tax Analysts*, 492 U.S. 136, 151 (1989) ("[FOIA exemption] have been consistently given a narrow compass."); *Local 3, Int'l Brotherhood of Electrical Workers v. NLRB*, 845 F.2nd 1177, 1180 (2nd Cir. 1988) ("[D]oubts [are] resolved in favor of disclosure.") See also *Milner v. Dept. of Navy*, 562 U.S. 3 (2011) and *U.S. Dept. of State v. Ray*, 502 U.S. 164 (1991).

[4] See, for example: Gold Declaration, at ¶13 ("As noted, Title 7 of the Code of Federal Regulations…provides for the participation of retail firms.") (App. 25); Shahin letter ("In regards for [Argus's] request for the yearly redemption amounts, or EBT sales figures…we are continuing to withhold that information under 5 U.S.C. 552 (b)(3) [FOIA Exemption 3], 7 U.S.C. 2018(c) [FNA], and Title 7 Part 278 of the Federal regulations at 7 CFR 278.1(q).") (App. 64); Weatherly e-mail ("[Argus] also requested for EBT redemption data which we withheld. Again from CFR 278.1 we are not allowed to release this information unless it is for a purpose directly related with the administration and enforcement of [FNA]") (App. 66).

> relevant income and sales tax filing documents, which will permit a determination to be made whether an applicant qualifies, or continues to qualify, for approval…." Redemption data is this type of information….

(USDA Br. 8). The conspicuous shift from its earlier line of reasoning also stresses an *exclusive* dependence on the statute:

> *There is no need to look beyond the plain language of §2018* here. As set forth above, when looking at the language of the statute itself, redemption data is included. Thus the district court appropriately did not look to the regulation in reaching its conclusion.

(USDA Br. 18) (Emphasis added.)

Although USDA may have analyzed the district court's decision correctly in this respect, in the course of focusing on the "plain language" of 7 U.S.C. §2018(c), the agency necessarily validates the Argus's conviction that there *are* no regulations that pertain. (Argus Br. 19, 20).

USDA's decision to relinquish its regulation-based defense of secrecy is effectively dictated by the lack of any regulation(s) on point.[5] In that sense, it is the decision is not altogether surprising. However, it begs follow-up questions:

1. Is it possible to reconcile the disregard of regulations with the §2018(c)'s "plain language" that authorizes the exemption by regulation?

[5] The aforementioned 7 C.F.R. §278.1(q)—a rare instance in which the term "redemption data" is actually used—clearly had no connection to the authorization or reauthorization of SNAP retailers. The regulation most closely linked to §2018(c) is 7 C.F.R. §278.1(a). And as previously discussed, that regulation strongly supports the Argus's view regarding §2018(c)'s narrow focus. (Argus Br. 26, 27)

2. And if the exemption derives from §2018 (c), alone, does that provision define or even refer to "redemption data" as confidential information?

There is nothing "expressly" incorporating that as a requirement in the application procedure, as previously noted. (Argus Br. 27 and Add. 24-31). This glaring void, in and of itself, undermines the crux of USDA's argument.

b. "Redemption data" is a misleading term for the SNAP retailer payments in issue.

In contrast to the abrupt riddance of its regulatory defense, USDA continues to cling to the term "redemption data," although it lacks both precision and relevance. Regardless of how USDA chooses to use "redemption data," the term has no appreciable bearing on the matter at hand. As a technical matter, "redemption data"" is not exactly what the Argus is asking to see and, as a practical matter, not what §2018(c) shields from public disclosure.

Frankly, stamping the "redemption data" label on SNAP retailer payment records does more to obscure than illuminate the true nature of the information being "protected" by the agency. And despite USDA's protestation, "redemption data" is neither a particularly explicit term nor one with singular application. (USDA Br. 17) USDA's own literature attests to that.[6]

[6] See: U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, "*Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program,"* by Laura Castner and Juliette Henke. Project office: Anita Singh, Alexandria, February 2011.[6] ("The study is guided by the

Although USDA recognizes that there must be a "clear indication" of the "inclusion of withheld material within [an Exemption 3] statute's coverage," the fact of the matter is that "redemption data" is not mentioned—let alone defined—in §2018(c). (USDA Br. 11) See *Central Platte Natural Resources District v. U.S. Dept. of Agriculture*, 643 F.3rd 1142, 1146 (8th Cir. 2011) (citing *Goland v. CIA*, 607 F.2nd 339, 350 (D.C. Cir. 1978)) and *Zanoni v. U.S. Dept. of Agriculture*, 605 F.Supp.2nd 230, 236 (D.D.C. 2009) (citing *Reporters Committee for Freedom of the Press v. U.S. Dept. of Justice*, 816 F.2nd 730,735 (D.C. Cir.1987).

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following questions: How often do SNAP [households] redeem their benefits…?" p. xiii) ("The average monthly benefit redeemed by households increased…." p. xiv) ("We examine…types of stores at which households redeem their benefits…." p. 1) ("…Cole and Lee (2005) conducted a study for FNS to identify how [SNAP households] redeemed their benefits…." p. 4) See also *Statement of Objectives for Store Tracking and Redemption System (STARS) Recompete,* Prepared for: U.S. Department of Agriculture, Food and Nutrition Service, November 9, 2010.[6] ("STARS supports SNAP operations and management at the Federal level, with its focus on benefit redemption processing and the authorization and monitoring of retailer organizations that participate in the program. STARS supports reconciliation of redemption data to electronic benefit transfers, to financial institution deposits, and to debits applied to the FNS redemption account…." p. 4) ("The following are the major functions supported by STARS: Supports store application screening…; Records initial store application information and authorization determinations; Records history of authorization and reauthorization…; Maintains records [of financial institutions] where SNAP benefits are redeemed or exchanged…." p. 14) ("**Store Reauthorization –** Based on the information submitted [in reauthorization application, Form FNS-252-R] STARS automatically reauthorizes stores for which eligibility has been verified…." p. 23)

Had there been a regulation expressly drawing "redemption data" into the purview of "information [that] is obtained" under §2018(c), presumably, USDA would have brought it to the attention of the Argus and the Court. It is curious how a term that USDA claims as part of its lexicon and considers vital to its Exemption 3 claim disappears in such crucial places.

An additional problem is that USDA misapprehends that there is a valid distinction to be made in this case between redemption and payment. In effect, the so-called redemption, even if accomplished by the retailer, is tantamount to the submission of an invoice. But the Argus did not ask to see the invoice. The Argus asked to see an annualized record of the government's payments to the SNAP retailers. That SNAP retailer payment information is the government's "data." The record of that information is not "submitted" to the government in any sense.[7]

As USDA describes the typical SNAP transaction, the actual "redemptions" are the actions of the recipient households, not the retailer. It is the recipients who "swipe their SNAP EBT cards" to initiate the transaction that results, ultimately, in the government's payment of the retailers.[8] (USDA Br. 5)

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[7] And as discussed in the succeeding section, the record of a retailer's SNAP payments is not collected in the authorization or reauthorization processes.

[8] See *Statement of Objectives for (STARS) Recompete*, *supra*, at 21:

> Then [recipient households] enter their personal identification number to access their EBT accounts and to authorize the transfer of benefits to the retailer's bank account to pay for item purchased. Information from the

What USDA seems to be suggesting is that because participating retailers receive payments as part of the program, USDA can retroactively claim them as discrete "required submission" under §2018(c). In doing so, USDA overlooks the tautological absurdity of its contention. Paying public money to retailers for their role in SNAP *is* SNAP. And it is abundantly clear that the Argus is not attempting to insinuate itself into the private sector—beyond having a right to know the public component of a private business's revenue deriving from its voluntary participation in a government program.

In short, the Argus in this case has really asked for nothing more than USDA's accounting of its SNAP spending. It seems highly likely Congress would have contemplated this to be a public record under FOIA, the exemptions notwithstanding.

c. §2018(c)'s "plain language" and context create a narrow FOIA Exemption 3 with limited application.

As USDA acknowledges, the "plain language" of the Exemption 3 statute should be controlling. (USDA Br. 18) The particular provision, 7 U.S.C. §2018(c), is a part of 7 U.S.C. §2018, the section of the Food and Nutrition Act (FNA) of 2008 that specifically deals with the procedure for approving retailers for

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> recipient's card along with the amount of purchase is sent…for approval. The EBT system verifies [retailer's] authorization…and then approves transaction, resulting in a transfer of SNAP benefits from Federal Reserve Bank to the retailer's bank account.

SNAP participation. In view of the range of topics covered by FNA, context is significant, as well. See *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214 (1978) ("starting point…is with the language and structure of the [exemption] statute.")

7 U.S.C. §2018(c) succinctly and unambiguously provides in pertinent part:

> **(c) Information submitted by applicants; safeguards; disclosure to and use by State agencies**
>
> *Regulations* issued pursuant to this chapter *shall require an applicant* retail food store…*to submit information*...which will permit a determination to be made as to whether such applicant qualifies or continues to qualify, for [SNAP] approval….

7 U.S.C. §2018(c) (Emphasis added.)

It is implausible that Congress designed 7 U.S.C. §2018(c) to conceal government spending—which is to say, public spending—under SNAP. And it is equally implausible that Congress authorized USDA to magically transform its record of SNAP payments *to* participating retailers into "redemption data" obtained *from* retailers merely by employing that terminology.

To complicate matters, in responding to the Argus's FOIA request, USDA shifted the Exemption 3 burden. Andrea Gold, SNAP Benefit Redemption Division Director, declared in an affidavit, "SNAP redemption data may only be disclosed as allowed by statute." (App. 28) In *Newport Aeronautical Sales v. Dept. of Air Force*, 684 F.3rd 160 (D.C. Cir. 2012), the court effectively contradicted the misapprehension:

> FOIA Exemption 3 permits agencies to withhold "matters that are…specifically exempted from disclosure by [a] statute" other than FOIA itself...."In short, 'only explicit nondisclosure statutes that evidence a congressional determination that certain materials ought to be kept in confidence will be sufficient to qualify under the exemption.'" *Wisconsin Project on Nuclear Arms Control v. Dept. of Commerce*, 317 F.3rd 275, 280 (D.C. Cir. 2003 (quoting *Irons & Sears v. Dann*, 606 F.2nd 1215, 1220 (D.C. Cir. 1979).

Id. at 164-165. What Gold's affidavit should have said, to be strictly accurate, is: "SNAP payment records may only be withheld as expressly provided by statute."

USDA now seems to have distanced itself from the Gold view, conceding that the operative question in the Exemption 3 analysis is whether there is a "clear indication in the statute" that withholding is required. *Zanoni v. U.S. Dept. of Agriculture*, 605 F.Supp.2nd 230,236 (D.D.C. 2009) (citing *Reporters Committee for Freedom of the Press v. U.S. Dept. of Justice*, 815 F.2nd 730, 35 (D.C. Cir. 1987). (USDA Br. 8, 11)

The problem that lingers, however, is although USDA pays lip service to the standard, it does seem particularly interested in applying it to the matter at hand. Instead, USDA continues to insist that "redemption data" fits into the §2018(c) Exemption 3 mold.

The innate weakness in USDA's argument is further exacerbated by §2018(c)'s statutory context. FNA's table of contents covers an assortment of

topics,[9] but only one directly pertains. The issue of §2018(c)'s Exemption 3 subject matter, "Information submitted by applicants," falls, exclusively, within the scope of §2018, "Approval of retail food stores and wholesale food concerns."

That USDA may happen to use so-called "redemption data" in connection with other aspects of FNA, *e.g.* administration, investigation and/or enforcement, does not mean confidentiality attaches to that information if it fails the point of

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[9]

FOOD AND NUTRITION ACT OF 2008
[As Amended Through P.L. 110–246, Effective October 1, 2008]
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origin test. And in this case, obscured by USDA's argument, is the fact that the information sought by the Argus does not originate within §2018(c).[10]

In any case, even if the "plain language" of §2018 (c) *could* be construed to cover SNAP payments to retailers, it would not be the *exclusive* interpretation. Given that public record access is the preferred result under FOIA—a truth that USDA has never disputed—if a reasonable alternative interpretation defending disclosure exists, it should be the controlling one.

The Argus's "alternative interpretation" of 7 U.S.C. §2018(c) significantly narrows the scope of Exemption 3 protection that USDA injects into the "plain language." The Argus reading does not embellish that "plain language" and, consequently, offers a logical, reasonable approach. At the very least the Argus's interpretation is as sensible as that advanced by USDA. When coupled with benefit of FOIA presumptions, it becomes the correct legal choice.

Another fundamental problem with USDA's argument is the conspicuous absence of any evidence that §2018(c) is the actual conduit through which USDA "obtains" its records of annual payments to SNAP retailers. Since USDA understands it "bears the burden of showing the records have been properly

[10] That the disclosure safeguards required in §2018(c) apply only to "information obtained under [2018(c)'s] authority" has been thoroughly discussed. (Argus Br. 21-23)

withheld," it is proof the agency would ordinarily be expected to produce. (USDA Br. 10) *Dept. of State v. Ray*, 502 U.S. 164, 173 (1991).

USDA's difficulty is that the payment information is *not* acquired or collected in the manner of a retailer "redemption." It bears repeating that the government's payment to a retailer completes the circuit of a SNAP transaction. The payment record is half of the SNAP commercial equation, in which government pays for the food. By any label, this is not the type of extrinsic information that retailers are required to submit to USDA for preliminary authorization or reauthorization determinations under §2018(c).

To counteract the benefit of FOIA's pro-disclosure presumptions to which the Argus is entitled, USDA should have persuasive answers for these questions:

- Where is "redemption data" defined?
- Where is "redemption data" used in §2018(c) or any regulation authorized by §2018(c)?
- Why does §2018(c) specifically refer to "information submitted by applicants"?
- Why is there no express requirement in §2018(c) that retail applicants and renewal applicants submit "redemption data"?
- Why doesn't USDA include a request for "redemption data" on either the SNAP authorization Form FNS-252 or reauthorization form FNS 252-R?
- Why is there no evidence USDA collects "redemption data" outside of the ordinary processing and accounting of a routine SNAP transaction?
- Why is there no evidence that SNAP retailers can expect or are promised confidential treatment of this public component of their revenue?

However, USDA does not provide a very convincing case for secrecy.

Having set out §2018(c) in full, USDA confirms that the "plain language of [§2018(c)] states that to participate in SNAP…retail stores…'shall' submit 'information'…." But then—following its claim that "redemption data" is "income" for retailers[11]—USDA asserts that "§2018(c) does not specify from whom FNS must obtain information" and concludes "that the agency obtains the information from outside sources is of no consequence to the analysis." (USDA Br. 14, 15)

USDA's extraordinary thesis is that §2018(c) "safeguards information 'obtained' by FNS, regardless of how, when, why or from whom obtained. (USDA Br. 14) This curious interpretation might be necessary for USDA to accommodate its understanding that "redemption data" is only provided/obtained in the course of the SNAP transaction. (USDA 14) However, it is impossible to reconcile an interpretation of the "plain language" of §2018(c) when the interpretation contradicts that language. And, clearly, USDA's interpretation does that.

A major premise in the Argus's argument has always been that the SNAP transaction represents the actual program in operation. In contrast, §2018(c) represents the admission/readmission procedure.

[11] USDA's premise that "income and sales tax filing documents" means "income documents" and "sales tax filing documents" is an illogical reading. Almost certainly Congress intended that to encompass tax-filing documents for both income and sales, *i.e.* federal and state information that would not be otherwise available to USDA. (Argus Br. 24)

USDA maintains it has authority to administer and enforce SNAP, and the Argus does not dispute that. But in staking its jurisdictional territory, USDA gives too much deference to *Bush v. United States*, 473 F.Supp. 715 (E.D. Penn. 1979) and too little to §2018(c). *Bush, supra,* decided in the Food Stamp Act era, merely upheld USDA's continuing right to review the qualifications of program participants. *Bush* does not suggest that if this "review" were part of a §2018(c) reauthorization process that the retail participant would be submitting "redemption data," which data §2018(c) would shield from the public. *Bush* simply does not implicate—even indirectly—the "information submitted" under §2018(c).

In other words, it is not of any real consequence whether or how USDA uses so-called "redemption data" under some other provision or section of FNA that might involve administration or enforcement.[12] The important matter is what is occurring under §2018(c), USDA's FOIA Exemption 3 provision. The inquiry in this case begins and ends with §2018(c).

To give its "continue to qualify" argument the appearance of merit, USDA must disregard §2018(c)'s "narrow compass." *U.S. Dept. of Justice v. Tax Analysts*, *supra,* at 151. The better view is that the phrase pertains to the reauthorization process and covers the same criteria used in the authorization

[12] As footnote 9 establishes with FNA's table of contents, the act covers the SNAP gamut, from admission to dismissal and everything in between.

procedure. The focus is on qualification, not performance.[13] Regardless, there would be no practical reason for USDA to require a renewing retailer to "submit" what USDA already has on record.[14]

Then, too, there are various indicators in USDA's in-house literature that "redemption data" is not an untouchable commodity. For instance in *Statement of Objectives for (STARS) Recompete*, *supra*, at 14, the "major functions supported by STARS services" were outlined to include:

- Supporting store application screening;
- Recording of store application information and authorization determinations;
- Recording store authorization and reauthorization history;
- Recording "records of Federal Reserve Banks and other financial institutions *where SNAP benefits are redeemed or exchanged*;
- Recording and monitoring *redemptions from* stores;

Id. at 14. (Emphasis added.) And in a proposal to revise its SNAP retailer application form, submitted to comply with the Privacy Act, USDA:

- Reiterated that STARS maintained records of some SNAP retailer financial data, including SNAP "redemption data relative to each entity that applied and/or was authorized to accept program benefits….."

[13] Performance is a factor for continued participation, but does not come into play through USDA's Exemption 3 provision, §2018(c). USDA's administration and enforcement that might be predicated on the reconciliation of the numbers is part of FNA, but not §2018(c), in which information is that "obtained from" retailers to determine qualifications to participate, not that "resulting from" the retailer's ensuing participation.

[14] To avoid unnecessary repetition, the Argus would refer the Court to its previous discussion of these issues at Argus Br. pp. 25-27.

- Noted that disclosure restrictions under 7 U.S.C. §2018(c) pertain only to "[i]nformation obtained from applicants [retailers] under the authority of 7 U.S.C. §2018(c)."
- Explained that "information in STARS comes from the authorization and reauthorization applications of stores…."
- Acknowledged that "STARS database also keeps SNAP redemption history *on* such entities."

Federal Register, Volume 75 Issue 247 (pp. 81205-81209) (December 27, 2010): *Notice To Revise Privacy Act Systems of Records* (at 5-8).[15]

A sentence's meaning, naturally, is dependent on diction. And the subtle change of a preposition can be significant and revealing. For instance, in addition to affirming that §2018(c) covers "information obtained *from*" retailers, USDA states that information stored in STARS comes *from* the retailers' authorization and reauthorization applications—Forms FNS-252 and 252-R. Yet the mention that a "redemption history" *on* retailers is "also" kept on STARS, does not link it to the application process or suggest it is "submitted" by the retailer.

The supporting statement USDA prepared as part of the Information Collection Request (ICR) submitted to the Office of Management and Budget (OMB)[16] for approval of revised application and reapplication forms[17] notes:

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[15] This official submission is published in the Federal Register and available online at www.gpo.gov.

[16] Office of Information and Regulatory Affairs (OIRA) is part of the OMB. The ICR package, including the supporting statement, is available on the OIRA website (www.reginfo.gov/public).

> This submission to [OMB] is for the approval of *information collection requirements* imposed on retail food stores…that apply for authorization to accept and redeem SNAP benefits, and for monitoring compliance and the continued eligibility….

Id. at 2.

> FNS is also responsible for requiring updates to application information and reviewing retail food store application at least once every five years to ensure that each firm is under the same ownership and *continues to meet eligibility guidelines.* Form FNS-252-R is used for this information collection requirement.

Id., at 5. (Emphasis added.) This submission represents, essentially, an admission that the acquisition of information under §2018(c), by means of the application forms, etc., does not involve any requirement that the retailer provide its own SNAP history.

In the final analysis, to prevail USDA needs to prove that confidential treatment of SNAP payment records ("redemption data") is mandated by its Exemption 3 law. But the plain meaning and context of §2018(c) simply do not support the argument. The information requested by the Argus is not FOIA Exemption 3 material.

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[17] These are FNS-252 and 252-R that application and reapplication forms for retailers seeking authorization or reauthorization (renewal) to participate in SNAP. (Add. #'s 2 and 3)

CONCLUSION

The Argus does not contest that USDA has the general authority to administer, to monitor and to enforce SNAP. The Argus does contest—and vigorously—USDA's authority to conceal government records in a matter in which the information is not expressly identified by a FOIA Exemption 3 withholding provision.

FOIA's general purpose is to advance "full agency disclosure" and "permit access to official information long shielded unnecessarily from public view." *Department of the Air Force v. Rose*, 425 U.S. 352, 360-361 (1976); *Milner v. Dept. of Navy,* 562 U.S. 3, 6 (2011) In keeping with that central objective, the agency carries the burden of proving its right to withhold comes within an exemption that "must be narrowly construed." *Dept. of State v. Ray,* 502 U.S. 164, 173 (1991); *Milner v. Dept. of Navy*, *supra.* The federal courts universally agree that Congress intentionally set the bar high.

In this case, USDA fails to clear that bar. With the FOIA presumptions firmly established, the "plain language" and context of 7 U.S.C. §2018(c) simply do not provide a sound legal basis for refusing to disclose records of payments to SNAP retailers. That information is essentially generated in the ordinary course of USDA's accounting for government spending in the administration of SNAP. The Argus is simply exercising a basic right to how public monies are used. USDA, on

the other hand, is misinterpreting the "plain language" of §2018(c) to frustrate the legitimate public interest served by FOIA.

In conclusion, USDA's refusal to disclose SNAP payment records is legally indefensible. The district court's decision should be overturned.

Dated this 8th day of April, 2013.

/s/ Jon E. Arneson
Jon E. Arneson
South Dakota Bar #45
123 S. Main Ave., Ste. 202
Sioux Falls, SD 57104
(605) 335-0083
Attorney for Appellant Argus Leader

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1. This brief complies with the type-volume limitation of FRAP 32(a)(7)(B) because this brief contains 4,465 words, excluding parts of the brief exempted by FRAP 32(a)(7)(B)(iii).

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I hereby certify that on April 8, 2013, I electronically filed the foregoing Appellant's Brief with the Clerk of the Court for the United States Circuit Court of Appeals for the Eighth Circuit by using the CMF/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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